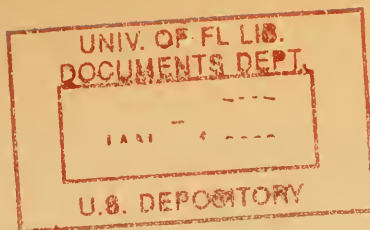


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**THE AMERICAN COMMISSIONER
MIXED CLAIMS COMMISSION
UNITED STATES AND GERMANY**

DECISION NO. 31

IN THE MATTER OF

FIXING REASONABLE FEES FOR ATTORNEYS OR
AGENTS UNDER THE AUTHORITY OF SECTION 9 OF
THE "SETTLEMENT OF WAR CLAIMS ACT OF 1928"

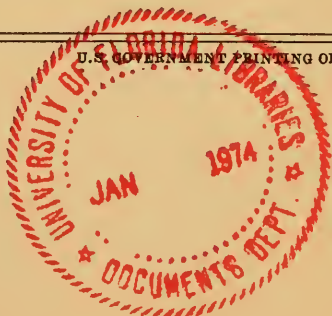
DOCKET NO. 7311

*Gustave Davidson, Administrator of the Estate of Hartwig Davidson,
Deceased, Claimant*

Peyser, Edelin & Peyser, Attorneys

CHANDLER P. ANDERSON,
American Commissioner

U.S. GOVERNMENT PRINTING OFFICE: 1929



MIXED CLAIMS COMMISSION, UNITED STATES AND GERMANY

Established in pursuance of the Agreement between the
United States and Germany of August 10, 1922

CHANDLER P. ANDERSON

American Commissioner

(II)

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MIXED CLAIMS COMMISSION
UNITED STATES AND GERMANY

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Deceased, Claimant*

Peyser, Edelin & Peyser, Attorneys

The above-named claimant has duly filed with the American Commissioner a written request that he fix a reasonable fee to be paid by him to his attorneys, Peyser, Edelin & Peyser, of Washington, D. C., as compensation for whatever services have been rendered by them on behalf of and with the authority of the said claimant, such services being of the character described in the provisions of Section 9 of the "Settlement of War Claims Act of 1928."

The claimant has objected to the amount of the fee asked by his attorneys on the ground that it is excessive, and the attorneys have been duly notified of the filing by the claimant of his request that a reasonable fee be fixed. The attorneys have filed with the American Commissioner an affidavit and a letter giving the information which they desire to have considered by the Commissioner as showing the reasonableness of the fee asked, which information has been brought to the attention of the claimant, who has filed an affidavit in reply, a copy of which has been transmitted to the attorneys.

In this case an award was rendered by this Commission on November 8, 1926, on behalf of the claimant, for \$20,632.22, with interest thereon at the rate of five per cent per annum from January 1, 1920, to the date of payment, which amount represents a debt consisting of a Mark bank balance in the amount of Marks 128,951.31 owing as of April 6, 1917, from the Bankhaus Adolph Davidson, Hildesheim, Germany, to the claimant in his capacity of Administrator of the Estate of Hartwig Davidson. The total amount received by the claimant from the Treasury Department in payment of this award is \$29,686.93.

The amount of compensation asked by the attorneys for services rendered is \$5,000. They make no claim for disbursements or expenses. The claimant suggests as a reasonable fee three per cent of the amount recovered, which would make the fee \$890.61.

The claimant's suggestion as to the amount of the fee is based on the mistaken belief that the three per cent rate fixed by Congress in Section 20 of the Trading with the Enemy Act for attorneys' services in collecting claims against the Alien Property Custodian applied also to claims before this Commission. The American Commissioner has already ruled on this question in his general Administrative and Jurisdictional Decision of September 28, 1928, in which he held as to the provisions above mentioned "that they cannot properly be applied to fees for services rendered concerning claims before this Commission."

It appears from the records of this Commission that the claimant's intestate died before this claim was filed with the Commission and left as his heirs at law and next of kin his widow, Paula Davidson, and two sons, Norman Davidson and Erwin H. Davidson. The claimant, Gustave Davidson, who represents the Estate was appointed Administrator solely for the purpose of prosecuting this claim which both the claimant and the attorneys allege represented the entire assets of the Estate.

It is stated in the affidavit filed by the attorneys that substantially all of the correspondence, negotiations and conferences were had with the son Erwin H. Davidson, who acted as the head of the family, and the attorneys were retained by him to prosecute this claim. No agreement was made by the claimant with these attorneys, and the amount of the fee to be paid to them for their services was not agreed upon by Mr. Erwin H. Davidson at the time they were

retained by him on behalf of the parties interested in the Estate. It was not until after the award had been rendered that the question of the amount of the fee was taken up for consideration.

Notwithstanding the fact that no agreement was made by the claimant with these attorneys, their employment by one of the parties interested in the Estate which has been acquiesced in by the others, and the acceptance by the Estate and the parties interested therein of the benefits resulting from the award secured by these attorneys, justify them in charging the claimant a reasonable fee for the services rendered by them. Furthermore, inasmuch as this fee is to be paid by the claimant out of the award, because this claim represented the entire assets of the Estate, it is evident that it was understood by the attorneys and by the claimant that the services in this case were being rendered on a contingent fee basis and that the attorneys were to be compensated for their services only in case an award was made and paid.

In February, 1928, after the award was made, and when Congress was about to pass the "Settlement of War Claims Act of 1928," making provision for the payment of the awards of this Commission, Mr. Erwin H. Davidson wrote to the attorneys asking to be advised of the amount of their fee, and in reply the attorneys suggested a fee of \$3,000 on the understanding that it be paid immediately. It is stated in the attorneys' affidavit that they felt that this sum was not adequate but they were willing to accept it if paid immediately. It is also stated in their affidavit that Mr. Davidson tacitly consented to this proposed fee and asked that the formal application for the payment of the award be prepared and forwarded to him for execution. Subsequently, on March 22, 1928, Mr. Davidson wrote to the attorneys withdrawing his assent to this fee, and thereupon the attorneys, in accordance with his wishes, prepared and forwarded to him the formal request which he has filed with the American Commissioner initiating the present proceeding for fixing a reasonable fee in this case.

The extent and character of the services rendered by these attorneys in prosecuting this claim are set out with considerable detail in the affidavit filed by them, and although in the affidavit filed by the claimant, Gustave Davidson, Administrator, the extent of these services as set out by the attorneys is substantially admitted, the valuation placed upon them by the attorneys is questioned.

In undertaking to decide the disputed question of valuation, as well as in ascertaining the character and extent of the services rendered, the American Commissioner has not relied wholly upon the contentions either of the claimant or of the attorneys, but has been assisted in reaching his conclusions by the records of this case on file with the Commission, and he has concluded, after an examination of all the available information, that the attorneys have somewhat overestimated and the claimant has greatly underestimated the value of the services rendered by the attorneys.

Now, therefore, considering that the payment of the attorneys' compensation was contingent upon securing and collecting an award and that the attorneys make no charge for any expenses or disbursements, and considering the character and extent and value of the services rendered by them, and in view of the circumstances above set forth and the consideration stated in the general Jurisdictional and Administrative Decision of September 28, 1928, and after careful examination and full consideration of the information furnished in this proceeding by the attorneys and the claimant, and by the records of this Commission pertinent to the questions involved, and after due deliberation thereon,

The American Commissioner decides and fixes as the reasonable fee to be paid by the claimant, Gustave Davidson, Administrator, Estate of Hartwig Davidson, Deceased, to these attorneys, Peyser, Edelin, and Peyser, in this case, the sum of Three thousand five hundred dollars (\$3,500), the said fee to be paid by the claimant and received by the attorneys as full compensation for all services rendered in the prosecution and collection of this claim, as defined by Section 9 of the "Settlement of War Claims Act of 1928."

Done at Washington, D. C., this 11th day of March, 1929.

CHANDLER P. ANDERSON,

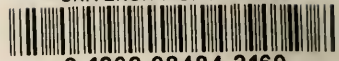
American Commissioner,

Mixed Claims Commission,

United States and Germany.



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